

MOTOR VEHICLE DEALER BOARD MINUTES

January 16, 2018

The regular meeting of the Dealer Board was held at the Department of Revenue offices, Lakewood, Colorado. The following persons were present:

BOARD MEMBERS:

Carrie Ann Baumgart
Ramona Graves Bode
Michael Jorgensen
Chris Langley
John Linton
Stan Martin
Steven Perkins

MEMBERS ABSENT:

Lucky Heggs
Jason White

SENIOR DIRECTOR OF ENFORCEMENT:

Flavio Quintana

EXECUTIVE SECRETARY:

Bruce Zulauf

LEGAL ASSISTANT:

**DEPT OF REVENUE,
AID, ENFORCEMENT
DIVISION STAFF:**

Chris Rouze
Chris Hartman
Gloria Breedon
John Opeka
Frank Agos
Josh Dexter
Cheryl Morrison
Tim Rotter
Steve Koenig
Brian Schurmann
Arleen Criddell Tapanen

ATTORNEY GENERAL'S OFFICE:

Brad Jones

VISITORS:

Tyler Lorimor, GVA Lakewood
Jimmy Brown, Flash Auto Sales
Jim Bode, J. Bode Used Cars
Matthew Groves, CADA
Tim Jackson, CADA
Todd O'Connell, CIADA
Husam Albarq, Icar Automotive
Michael Dommermuth, Esq., CADA
Mike McKinnon, Esq., CIADA
Todd Maul, John Elway Dealerships
Rick Wynkoop, Esq.

President, Stan Martin, opened the meeting of January 16, 2018 at 9:04 a.m. Mr. Martin turned the floor over to Executive Secretary, Bruce Zulauf.

AGENDA REVIEW AND ANNOUNCEMENTS

Mr. Zulauf informed the Board there were no changes to the agenda as posted. Mr. Heggs will not be in attendance today. Mr. Zulauf introduced new board member, Carrie Ann Baumgart, who has filled the new motor vehicle dealer vacancy. Mr. Zulauf also introduced the new Senior Director of Enforcement, Flavio Quintana and the Division's new Criminal Investigator, Brian Schurmann.

MINUTES

The minutes of the December 19, 2017 meeting were approved 5-0-1 (Baumgart abstains).

BACKGROUND INVESTIGATIONS TEAM

Ms. Breeden presented the following to the Board:

Dealer Applications:

- **Flash Auto Sales #42658** – Motion to grant the license – approved 5-1 (Langley opposed).
- **Icar Automotive #44030** – Motion to grant the license – approved unanimously.
- **Star Auto Sale #44034** – Motion to table until more information is received – approved unanimously.

Salesperson Applications:

- **Chartier, Allen L. #625776** – Motion to grant a conditional license based upon applicant providing the standard letter from the employing dealer which includes the normal terms and conditions – approved 5-1 (Langley opposed).
- **Lorimor, Tyler R. #183153** – Motion to grant the license – approved unanimously.

INVESTIGATIONS REPORT

Ms. Rouze presented the following to the Board:

Statistical Reporting – Ms. Rouze informed the Board that we started with 256 cases, 151 new cases were opened and 143 cases were closed for the month, giving the Division a balance of 264 open cases. There were 422 background inquiries performed.

Affidavits of Probable Cause:

- **Angel's Auto Sales, DL #43282** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Angel's Auto Sales, Dealer #43282; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.

- **The Denver Collection, DL #43174** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to The Denver Collection, Dealer #43174; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.
- **King Chevrolet Buick GMC, DL #38658** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to King Chevrolet Buick GMC, Dealer #38658; and that the case be assigned to the Office of Administrative Courts for a hearing on the merits and that the Executive Secretary be permitted to engage in settlement negotiations pursuant to C.R.S. 12-6-104 – approved unanimously.
- **Nations Auto Inc. III, DL #39701** – Motion that the Board finds probable cause based upon the Affidavit of Probable Cause presented to the Board today respective to Nations Auto Inc. III, Dealer #39701; and that the Colorado Motor Vehicle Dealer Board summarily suspend the motor vehicle dealer’s license in accordance with C.R.S. 24-4-104 as the owner has engaged in deliberate and willful acts and has been convicted of a mandatory qualifying felony – approved unanimously.

EXECUTIVE SECRETARY’S REPORT

Mr. Zulauf presented the following to the Board:

- **Proposed Stipulation and Final Agency Order – RNB Cars, Inc. #41110** – Motion to accept the Proposed Stipulation and Final Agency Order – approved unanimously.

Mr. Jones recused himself and left the room.

- **Initial Decision – Jason Hobeiter, Motor Vehicle Salesperson License #178400** – Motion to table for 30 days to seek legal advice – approved unanimously.
- **Initial Decision – William Christopher Walkinshaw, Motor Vehicle Salesperson License #197378** – Motion was made to accept the Findings of Fact, Conclusions of Law and revoke the license – approved 5-1 (Langley opposed).

The Board took a 5 minute break. Mr. Jones returned to the room.

BOARD DISCUSSION – *Should Regulations 12-6-118 (3) (i) & 12-6-520 (3) (h) “disclosures of material particulars” be re-opened.*

Mr. Zulauf gave a brief history of the statute and how it currently reads. He also stated that the rules have been in effect for approximately twenty (20) months. The Associations will address the Board with their reasons to re-open the rules.

Mr. Jones advised the Board of the two options at their disposal, which are:

1. Leave the rules as is, or;
2. Use their authority under 12-6-104 (3) (a) to look into amending the rules.

Mr. Tim Jackson of CADA suggested the rule be amended to exclude “mechanical” in any disclosure requirements. He also suggests discussing “hail” damage further.

Mr. Todd Maul of John Elway Dealerships stated that the current rule has great potential to cause “unintended consequences” on cheap cars that are used for basic transportation. He suggest vehicles of a certain age (7 years old or greater) or certain mileage (150 miles or greater) be exempt of disclosure requirements.

Mr. Zulauf reminded the Board and panel that the Division investigates “knowledge at the time of sale”. Under the current rules, dealers are responsible for material particulars they know about at the time the deal is consummated.

Mr. Dommermuth of CADA stated that these new rules have created an unreasonable regulatory restriction on dealers and ultimately hurts the consumer as a result. He agrees that Mr. Maul’s comments and suggestions would alleviate some of the issues that have been discussed today.

Mr. Todd O’Connell of CIADA stated he agrees with CADA’s aforementioned comments. He further stated that since the new rule took effect, the wholesale/auction side of the industry is experiencing “over disclosure” on “hail” since there is no “hail definition”.

Mr. McKinnon of CIADA stated that he too agrees with Mr. Dommermuth and CADA’s comments and suggestions. He further stated that clarity should be given with regard to “mechanical” and “hail” issues and concurs with Mr. Maul’s suggestions. A lengthy discussion followed.

Mr. Wynkoop, consumer attorney, was concerned about the term “over disclosure” as it is being used. He said he was fascinated that someone could over disclose to a consumer what is wrong with a vehicle. He stated that consumers need to know from the dealers if there are mechanical or hail issues with a vehicle they are purchasing. He further suggested the Board and panel allow the rule time to work before going back to the table to amend so soon.

Mr. Jones reminded the Board that these rules will again be up for review in two years (the end of 2020/2021). He also urged the Board to consider all comments made today as well as the legislative declaration that was mandated and structured when this automobile industry statute was passed, requiring the Board to represent all the citizens of Colorado whether industry or consumer.

Mr. Zulauf stated that the integrity and optics of the Board should always be paramount.

The Board will re-address the re-opening of the rules at a future meeting.

New Business – None

Public Comment – None

The meeting of the Motor Vehicle Dealer Board was adjourned at 11:57 a.m.

(Note: The Minutes of the Motor Vehicle Dealer Board summarize the contents of the meeting. They are not verbatim transcripts and are based principally upon the digital recording of the meeting and upon the later collaboration of staff attendees to ensure that the summary faithfully captures the matters before the Board and the actions the Board took. The digital recording of the meeting is a permanent record of the Board, retained in the electronic filing system of the Auto Industry Division, and is available as a resource for review, as needed.)

Bruce Zulauf
Executive Secretary